IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3506 OF 2005

The State of Maharashtra ...Applicant
Vs.
Sonu Govind Bhil ...Respondent

WITH
CRIMINAL APPLICATION NO.3510 OF 2005

The State of Maharashtra ...Applicant
Vs.
Umesh Pandurang Satwe & Anr. ...Respondents

WITH
CRIMINAL APPLICATION NO.3511 OF 2005

The State of Maharashtra ...Applicant
Vs.
Mannu @ Prabhakar Kashinath Bhagat ...Respondent

WITH
CRIMINAL APPLICATION NO.3512 OF 2005

The State of Maharashtra ...Applicant
Vs.
Sinna @ Ravi Swami Nadar ...Respondent

WITH
CRIMINAL APPLICATION NO.3513 OF 2005

The State of Maharashtra ...Applicant
Vs.
Ehsan Abdul Ajeeb Siddiqui ...Respondent

WITH
CRIMINAL APPLICATION NO.3522 OF 2005

The State of Maharashtra ...Applicant
Vs.
Mehfooz Aslam S/o.Safia Ahmed ...Respondent

WITH
CRIMINAL APPLICATION NO.2769 OF 2005

Ravindra @ Ravi Kashiram Goregaonkar ...Applicant
Vs.
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO.2977 OF 2005

Shiva Sargappa Kandarkar ...Applicant
Vs.
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO.3505 OF 2005

The State of Maharashtra ...Applicant
Vs.
Balkrishna @ Krishna Narssaya Baikade ...Respondent

Shri. A.S. Gadkari, A.P.P. for the Applicant in Criminal Application Nos.3506 of 2005, 3510 of 2005, 3511 of 2005, 3512 of 2005, 3513 of 2005 and 3522 of 2005.

Shri. H.K. Prem alongwith Ms Priyanka Vegad for the Respondent in Criminal Application No.3511 of 2005, 3512 of 2005 and 3513 of 2005.

Shri. H.H. Ponda for the Respondent No.1 in Criminal Application No.3522 of 2005.

Ms Anjali Patil for the Applicant and Shri. A.S. Gadkari, A.P.P. for the Respondent in Criminal Application No.2769 of 2005.

Shri. Harshad Bhadbhade i/b. Imtiyaz Ahmedi Patel for the Applicant and Shri. A.S. Gadkari, A.P.P. for the Respondent in Criminal Application No.2977 of 2005.

Shri. A.S. Gadkari, A.P.P. for the Applicant in Criminal Application No.3505 of 2005.

CORAM : A. S. OKA, J.
DATED : JULY 14, 2005.

P.C.:

1. All the Applications relate to the accused in the same offence. Criminal Application No.2769 of 2005 and Criminal Application No.2977 of 2005 are the Applications for Bail made by the accused and rest of the Applications are filed by the State for cancellation of Bail granted in favour of the other accused by the Sessions Court.

2. These Applications relate to the C.R.No.270 of 2004 registered at N.M.Joshi Marg Police Station on

23rd December, 2004 for offences punishable under Section 304, 328, 272, 273, 120-B of the Indian Penal Code and Sections 66(1)(b) and 65(e) of the Bombay Prohibition Act. The case in short is that large number of persons consumed poisonous illicit liquor at the den of accused Ravindra Goregaonkar, the Applicant in Application NO.2769 of 2005. As a result of consumption of poisonous liquor, twenty three persons lost life and other twenty five became seriously ill. Considering the controversy involved in all the Applications, the same can be disposed of by a common judgment.

3. I have heard Shri. Gadkari, learned A.P.P. in support of the Applications made for cancellation of bail. At the outset, he invited my attention to the fact that conspiracy is alleged against all the accused and therefore, Section 120-B of the Indian Penal Code has been applied. He therefore, invited my attention to the well-known decision of the Apex Court reported in 1977(4) Supreme Court Cases, 540 (Yash Pal Mittal Vs. State of Punjab). He submitted that considering the gravity and magnitude of the offence all these Applications will have to be considered in the perspective of applicability of the Section 120-B of the Indian Penal Code. Shri. Gadkari has pointed out the ground on which the bail granted in favour of

the various accused deserves to be cancelled. I am referring to specific submissions made by Shri. Gadkari while dealing with specific applications. The submission in general made by Shri. Gadkari is that learned Sessions Judge was too liberal in enlarging the accused on bail. It must be noted that in none of the Applications for cancellation of bail, the State has relied upon any event which has happened after the release of the concerned accused on bail as a ground for cancellation. I have also heard respective Counsel appearing in support of the bail applications filed by the accused Ravindra Goregaonkar and accused Shiva Kandarkar. Shri. Gadkari, learned A.P.P. has made extensive submissions for opposing said bail applications. Now, I will refer to the case made out in every application separately.

CRIMINAL APPLICATION NO.3506 OF 2005:

4. This is the Application filed by the State for cancellation of bail granted in favour of the original accused No.6 Sonu Govind Bhil. Application for bail was made by Sonu Bhil and two others bearing Application No.34 of 2005 before learned Sessions Judge. The case of the prosecution is that main accused Ravindra Goregaonkar had taken a premises owned by the said accused No.6 Sonu Bhil on rent for

the purposes of storage of illicit liquor. In so far as this case is concerned, it is not the allegation of the prosecution that the accused No.6 Sonu was participating in the business of selling or manufacturing illicit liquor. The evidence against the said Sonu is in the form of statements of Shantaram Jadhav and Praful Gaovthankar. All that the said witnesses say is that this accused Sonu had rented out his premises to Ravindra Goregaonkar for storage of illicit liquor. On 23rd December, 2004, three plastic cans containing illicit liquor were seized from the premises of the said Sonu. It is to be borne in mind that the case of the prosecution is that the liquor had become poisonous because of use of Methyl Alchol. The sample of the illicit liquor seized in the premises of Sonu was sent to the Chemical Analyser. The report of the Chemical Analyser which is placed on record shows that the liquor contained only Ethyl Alchol. Therefore, learned Sessions Judge observed that at highest accused No.6 may be guilty of offences punishable under the Prohition Act. The accused No.6 is in custody since 29th December, 2004 and the chargesheet is filed long back. On plain reading of the material available against accused No.6 Sonu, I find no fault with the order passed by the learned Sessions Judge by which he enlarged the said Sonu on bail. There is no

case made out that the accused No.6 has misused the facility of bail granted to him. Accordingly, Application is rejected.

CRIMINAL APPLICATION NO.3510 OF 2005:

5. This Application is filed by the State for cancellation of bail granted in favour of the original accused Nos.10 and 11 namely, Umesh Pandurang Satve and Mukesh Shantaram Goregaonkar. Only allegation against these two accused seems to be that they were employed by the co-accused Ravindra Goregaonkar and their job was to serve liquor to the customers in the den. There is no material on record to show that the said accused were aware that the liquor was poisonous. That is the reason why the learned Sessions Judge, even after noting that Section 120-B of the Indian Penal Code has been applied, enlarged the accused on bail by observing that at highest, they can be guilty of the offences punishable under the Bombay Prohibition Act. No case has been made out that the facility of Bail has been misused by both the said accused. Hence, there is no merit in the said Application and the Application is rejected.

CRIMINAL APPLICATION NO.3511 OF 2005:

6. This Application is filed by the State praying for cancellation of bail granted in favour of Mannu @ Prabhakar Kashinath Bhagat who is the Accused No.12. The case of the prosecution is that after the accused Ravindra Goregaonkar noticed the reaction on the persons who consumed the liquor in the den, on advise of another co-accused Shiva, he threw away the liquor in his den in a toilet and the liquor was replaced by a new stock. Perusal of the prosecution case shows that at highest what can be said is that this accused No.12 supplied liquor to Ravindra Goregaonkar for the purposes of replacing poisonous liquor. The liquor allegedly supplied by this accused was anlaysed by the Chemical Analyser. The report reveals that it contained only Ethyl Alcohol in water. Therefore, the learned Sessions Judge has observed that so far as the offences under section 304 and 323 of the Indian Penal Code are concerned, this accused was not prima facie involved apart from the section 120-B of the said Code which was applied. Here also no case is made out on the basis of the conduct of the accused after he was enlarged on bail. Considering the material available against the said accused Mannu, no case is made out for cancellation of bail and the Application is rejected.

CRIMINAL APPLICATION NO.3512 OF 2005:

7. This is an Application by the State for cancellation of bail granted in favour of the accused No.13 Sinna @ Ravi Swamy Nadar. It is alleged that the said Sinna is a transporter of illicit liquor. The allegation against him is that he purchased illicit liquor from a person in Panvel Taluka and transported it to Shiva and Ravindra. The evidence against the said Sinna is in the form of memorandum panchnama dated 29th December, 2004. He pointed out the place where he delievered and handed over the illicit liquor to Shiva and Ravindra on 23rd December, 2004, that is the day after the incident. The Chemical Analyser's Report of the liquor which was seized shows that it contains only ethyl alcohol in water. The only incriminating piece of evidence is the piece of cloth seized from his two-wheeler and according to the report of the Chemical Analyser, the cloth contained methyl alcohol. The allegation of the prosecution seems to be that he supplied liquor to Ravindra Goregaonkar and Shiva on 23rd December, 2004 i.e. not on the date of incident or earlier to the incident. Therefore, it is very difficult to connect the said accused to the offence in any manner. At highest, it can be said that he has committed offence under Bombay Prohibition Act. Therefore, no fault can

be found with the learned Sessions Judge when bail was granted in his favour and the said application deserves to be rejected. Accordingly, Application is rejected.

CRIMINAL APPLICATION NO.3513 OF 2005:

8. This is an Application made by the State for cancellation of bail granted in favour of accused NO.5 Ehsan Siddiqui. The material available against the said Ehsan is in the form of three memorandum panchnamas. One memorandum records that he pointed out the place from where he brought poisonous liquor from co-accused Pandit Kalan. The second one reveals that he pointed out the place where he delivered the poisonous liquor to Ravindra Goregaonkar's den and third is where he pointed out the motor car by which he used to transport the poisonous liquor from Hedutane village to the place of Ravindra Goregaonkar. The report of the Chemical Analyser of analysis of small piece of seat cover recovered under the memorandum panchnama from the car is on record. The report shows that said piece of cloth contains methyl alcohol. Other material against him is that on personal search of the said accused, one cell-phone was seized which was allegedly used at the time of commission of crime. There is a statement of Police

Constable who verified the address of the subscriber of the said cell-phone which was infact used by this accused. It is pertinent to note that a reply was filed by the prosecution before the learned Sessions Judge in which it is alleged that another accused Mehfooz purchased the car in question for transporting illicit country made liquor and he had given the said car to the said accused Ehsan, and he was paying Rs.50/- per day to the accused Ehsan and as and when the car was used for transporting illicit liquor he used to pay Rs.300/- per day to the said Ehsan. The learned Sessions Judge therefore, observed that at highest this Accused was driving the car which was infact acquired by the co-accused Mehfooz. If this is the only evidence available against this accused, the learned Sessions Judge was right in exercising powers under section 439 of the Code of Criminal Procedure, 1973. The specific allegation against this accused appears to be that he transported the liquor on 19th December, 2004. In this case also there is no case made out that the accused has misused the facility of bail. Considering the material available on record, no case is made out for cancellation of bail and the Application deserves to be rejected.

CRIMINAL APPLICATION NO.3522 OF 2005:

9. This is an Application made by the State for cancellation of Anticipatory Bail granted by the learned Sessions Judge in favour of accused Mehfooz son of Safia Ahmed who is the accused No.14. Shri. Gadkari, learned A.P.P. criticised the approach of the learned Judge when he granted Anticiptory Bail to the accused involved in a case of serious magnitude. He submitted that considering the gravity of offence, custodial interrogation of the said accused was very much necessary. He has invited my attention to the material available against the said accused that is in the form of statement of one Shankar Shivane who is Head Constable and the material which indicates that he purchased the car in question in a fictitious name. It must be noted here that after Aniticpatory Bail was granted in favour of the said accused, the learned Judge heard bail application filed by the co-accused Ehsan Siddiqui. While hearing the said Application learned Judge noticed that the stand taken by the prosecution was that the said Ehsan Siddiqui was merely a driver of the said accused Mehfooz thereby implying that actual transporter of the illicit liquor was accused Mehfooz. Therefore, in fairness to the prosecution, the learned Judge issued show cause notice to the said Mehfooz calling upon him to show

cause as to why Anticipatory Bail granted in his favour should not be cancelled. It is not in dispute that the notice was kept pending by the learned Judge and during the pendency of the notice, the said accused Mehfooz was made to attend Police Station for the purposes of interrogation for about one and half months. The learned Judge took up the notice for hearing after filing of the chargesheet. After filing of the chargesheet, the learned Judge came to the conclusion that the role played by the said Mehfooz is insignificant in so far as offences under section 304 and 328 of the Indian Penal Code are concerned and that is the reason why by detailed order passed on 30th March, 2005, the learned Judge discharged notice. By doing so, learned Judge passed strictures against the Investigating Officer by observing that he caused the court to form a wrong opinion about the nature of involvemnet of the said Applicant. There is no material available to directly connect the said Mehfooz with the main offence of serving poisonous illicit country made liquor in the den of Ravindra Goregaonkar. After granting Anticipatory Bail, the learned Judge himself issued a show cause notice for cancellation of the Anticipatory Bail and thereafter made the accused to attend the Police Station for more than one month. It is true that the learned Judge ought to have refrained himself from passing

strictures against the Investigating Officer when the Investiating Officer was dealing with the offence having such a magnitude involving large number of accused and witnesses. Taking over all view of the matter, this is not the case where at this stage, the said Anticipatory Bail granted in favour of the said Mehfooz can be cancelled.

CRIMINAL APPLICATION NO.2769 OF 2005:

10. This Application for regular bail is by one of the principle accused Ravindra Goregaonkar. The allegation of the prosecution is that twenty three persons died and twenty five persons became seriously ill as a result of consumption of poisonous illicit liquor containing methyl alcohol at the den of the said accused. The learned Counsel for the Applicant submitted that there is nothing on record to show that the said Ravindra Goregaonkar was having knowledge that the liquor which was served on 22nd December, 2004 contained poisonous material. She submitted that it is not the case of the prosecution that the said accused is the manufacturer of the liquor. She, therefore, submitted that no purpose will be served by keeping the applicant in custody. The learned A.P.P. has taken me through the various material against the

said accused Ravindra Goregaonkar.

11. There are statements of twenty two injured persons on record who have stated that they consumed the liquor on 22nd December, 2004 in the den of the Applicant. These are the persons who had become seriously ill as a result of the consumption of alcohol. There are statements of the relatives and friends of the deceased victims and injured persons bringing on the record that deceased and other persons consumed liquor at his den. There is a recovery of five empty rubber tubes containing some poisonous liquor. After the seizure of the said tubes, the same were sent to the Chemical Analyser and the report of the Chemical Analyser is that whatever liquor was found therein contains methyl alcohol. There are reports of the Chemical Analyser in so far as the deceased persons are concerned. The reports are of examination of the stomach wash and blood. The reports indicate that there was methyl alcohol in the stomach wash and blood. The cause of death indicated in the Post Mortem Notes is metabolic acidosis as a result of ingestion of fatal dose of methyl alcohol in case of Acute Alcoholic Intoxication. The suppliers like Ehsan Siddiqui and Sinna Nadar who are the co-accused have recorded the memorandum pointing out the den of Ravindra Goregaonkar. It will be necessary

to refer to the statement of one Vishwajet Nakashe. he is the person who heard the conversation between the Applicant Ravindra Goregaonkar and co-accused Shiva. In the converstaion which took place on 22nd December, 2004 at about 7.00 p.m., Shiva is stated to have asked Ravindra whether he had thrown away the material. There are statements of the witnesses who have stated that on the same day, Applicant Ravindra Goregaonkar threw away the poisonous liquid in a toilet.

12. Taking over all view of the material against the Ravindra, it is obvious that he is responsible for the tragedy in the sense that all the deceased persons and persons who became seriously ill had consumed poisonous liquor in his den. The action of the Applicant of throwing the liquor late in the evening on the relevant day indicates that he was aware about the poisonous nature of the liquor. Considering material against the Applicant which is in abundance, I find that no case is made out for enlarging the Applicant Ravindra Goregaonkar on bail. There is no reason to take view different from the view taken by the learned Sessions Judge and the Application is liable to be rejected.

CRIMINAL APPLICATION NOS.2977 OF 2002 AND 3505 OF

2005:

13. Criminal Application No.2977 of 2005 is filed by the accused Shiva for bail and Criminal Application No.3505 of 2005 is filed by the State for cancellation of bail granted in favour of accused Balkrishna @ Krishna Narsayya Baikade. The allegation of the prosecution is that they are the partners who are carrying a business of selling illicit country made liquor. There is some similarity in the allegations made by the prosecution against them and therefore, I am taking up both the applications together. So far as the accused Shiva is concerned, learned A.P.P. has invited my attention to the various documents on record showing alleged complicity of the said Shiva. The learned Counsel appearing for the Applicants has brought to my notice that there is no material on record to show that the liquor which was sold on the date of offence in the den of Ravindra Goregaonkar was supplied by the said Shiva. He submitted that all along the case of the prosecution is that the liquor was brought by the other accused Ehsaan and Mehfooz from one Pandit and two others who were manufacturers of illicit liquor. He submitted that there is no evidence on record to connect Shiva with the offence.

14. The material against the Applicant Shiva is in

the form of statements of Ramchandra, Ramdas and Javed. The statements indicate that Shiva and Balkrishna were running a den for selling illicit liquor and they were also suppliers who were supplying liquor to the main accused Ravindra Goregaonkar. There is a statement of witness Subhash Patil in which he stated that on 23rd December, 2004 at 7.30 in the evening he saw Ravindra Goregaonkar. At that time accused Shiva came in taxi and he brought three cans having capacity of 10 litres with him in a taxi and handed over to the cans the accused Ravindra. The said statement will not help the prosecution in any manner as this indicates that liquor was delivered by the Applicant Shiva to Ravindra Goregaonkar on the next day, that is 23rd December, 2004. The statements of Ramchandra, Ramesh and Javed are very general in nature in which they have stated that they have seen Shiva and Balkrishna supplying illicit liquor to Ravindra Goregaonkar. They have stated that considering the terror created by them, they have not informed any one about the said supply of liquor. The statement of Vishwajeet Nakashe discloses that he heard conversation of the Applicant Shiva with Ravindra Goregaonkar. All that the Applicant Shiva asked Ravindra is whether he has thrown away the material. This conversation has taken place according to the said witness at 7.00 p.m. There is a statement

of one Janardhan who has stated that on 22nd December, 2004 at about 6.15 p.m. he had seen Ravindra Goregaonkar pouring illicit liquor in toilet. Thus, it appears that even before the Applicant Shiva had conversation with Ravindra, the liquor was thrown by the said Ravindra in toilet.

15. The allegation made by the prosecution against the accused Balkrishna is that he was a partner of Shiva. While dealing with the bail application filed by the said Balkrishna, the learned Sessions Judge has observed that the case of the Investigating Officer was that on the relevant day the liquor was brought by Ehsan Siddiqui. That is the reason why learned Judge held that the said accused Balkrishna was not connected with the offence. It will be necessary to refer to the statements of the two witnesses namely Manohar and Vishwanath More who are the victims and who have stated that on 22nd December, 2004 they first visited the den of Shiva and Balkrishna and as liquor was not available at the said den, they went to the den of Ravindra Goregaonkar. From the stand taken by the prosecution before the learned Sessions Judge, it does appear that the stand was that liquor was brought by Ehsan and one Mehfooz. The evidence regarding delivery of liquor by Shiva to the Ravindra Goregaonkar is of 23rd December, 2004 that is a day

after the poisonous liquor was sold and consumed. At highest, the material against Shiva and Balkrishna is that they were suppliers of liquor to Ravindra. Even the other accused Mehfooz and Ehsan were alleged suppliers of liquor to both Shiva and Ravindra. The alleged telephonic conversation between Shiva and Ravindra is the only piece of evidence which indicates that Shiva had knowledge that something has gone wrong with the liquor supplied in the den of Ravindra Goregaonkar on 23rd December, 2004.

16. Taking over all view of the material on record, the learned Sessions Judge in case of Balkrishna observed that there was no material on record to show that he supplied poisonous liquor to Ravindra. All that can be said about Shiva is that he advised Ravindra to destroy the poisonous liquor and the replacement was brought by Shiva. The learned Judge has observed that some of the witnesses have deposed that terror was created by Shiva. At this stage, it appears to me that there is no material on record to show that Shiva and partner Balkrishna supplied the poisonous liquor to the Ravindra Goregaonkar.

17. I have rejected the Bail Application filed by the Ravindra Goregaonkar as there is overwhelming

evidence regarding consumption of illicit liquor at his den by the deceased and other persons who became ill as a result of consumption of alcohol. There is material to indicate that he was having knowledge about the nature of liquor sold in his den. He has made an attempt to destroy the poisonous liquor by throwing it in the toilet. However, so far as Shiva is concerned, though Section 120-B of the Indian Penal Code is applied, the question is whether his custody should be continued. He is already in custody for last six months. The prosecution evidence consists of several witnesses and the trial may not be over in the near future. The alleged terrorising activities of the said Shiva can be taken care of by imposing stringent condition of not entering the city of Mumbai. Hence, in my view Applicant Shiva is entitled to be enlarged on bail. For the same reason, the Application made by the State for cancellation of Bail granted to his partner Balkrishna deserves to be rejected.

18. Hence, I pass the following order:

: O R D E R :

i) Criminal Application Nos.3505 of 2005, 3506 of 2005, 3510 of 2005, 3511 of 2005, 3512 of 2005, 3513 of 2005, 3522 of 2005 and Criminal Application No.2769 of 2005 are rejected.

ii) Criminal Application No.2977 of 2005 is allowed. Applicant Shiva Shetty @ Shiva Sangappa Khandalkar shall be enlarged on bail in connection with C.R.No.270 of 2004 of N.M. Joshi Marg Police Station, subject to furnishing a personal bond of Rs.50,000/- with two local sureties in the like amount.

iii) The Bail is granted subject to condition that till the conclusion of trial, the Applicant Shiva will not enter the city of Mumbai without permission of the concerned Court except for attending to the dates fixed in the case.

iv) The Applicant Shiva will be enlarged on bail only after he furnishes his address of place of residence to the concern officer of the jail where he is detained and to the Investigating Officer. He will also furnish alongwith the address his telephone number and cell phone number, if any.

v) The Bail is granted subject to condition that before effect is given to the order, the Applicant will surrender his passport to the Investigating Officer. If the Applicant does not possess passport, he will file an affidavit to that effect in this Court

within a period of one week from today.

vii) The Bail is granted subject to condition that the Applicant will report once in a week to the concerned police Station within whose jurisdiction he is going to reside after he is released on bail.

viii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

ix) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

x) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

xi) Application is disposed of in the above terms.

xii) The parties to act upon an authenticated copy of this order.

JUDGE